Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Text

CONFIDENTIAL

PAGE 01 ISLAMA 04474 110822Z

43
ACTION EB-11

INFO OCT-01 NEA-14 ISO-00 L-03 AGR-20 SWF-02 SP-03 AID-20

NSC-07 RSC-01 CIEP-02 TRSE-00 SS-20 STR-08 OMB-01

CEA-02 CIAE-00 COME-00 FRB-02 INR-10 NSAE-00 XMB-07

OPIC-12 LAB-06 SIL-01 DRC-01 IGA-02 /156 W
---------- 119477
R 110554Z MAY 74
FM AMEMBASSY ISLAMABAD
TO SECSTATE WASHDC 4656

C O N F I D E N T I A L ISLAMABAD 4474

E.O. 11652: GDS
SUBJ: PL-480 AND BARLEY EXPORTS

REF: STATE 089446

1. BEGIN SUMMARY. RE REFTEL I AM VERY RELICTANT THAT WE DEMAND OF THE GOP THAT IT PURCHASE UP TO 40,000 MT OF FEEDGRAINS OR REPAY USG UP TO $4.6 MILLION AS PENALTY FOR INADVERTENTLY NOT STOPPING ALL BARLEY EXPORTS AS OF THE TIME WE SIGNED THE PL-480 SORGHUM AGREEMENT. IF WE TAKE THIS STEP THE GOP WILL DOUBTLESS CONSIDER OUR ACTION HARSH AND OVERLY LEGALISTIC. FURTHERMORE, SUCH A PENALTY WILL DISSIPATE SUCH GOOD WILL AS WE HAVE EARNED IN GIVING PREVIOUS PL-480 ASSISTANCE. THEY WILL ALSO NOT UNDERSTAND WHY AFTER THEIR EXPLANATION AND EMBARGO ACTIONS AT THE FIRST OF THE UAR, IT HAS TAKEN FOUR MONTHS FOR THE USG TO DECIDE TO TAKE THIS STEP. OUR SUGGESTION FOLLOWS. END SUMMARY.

2. FOR PERSPECTIVE PURPOSES, I THINK IT USEFUL TO REVIEW THE FACTS OF THIS WHOLE CASE. AS A HUMANITARIAN GESTURE ON OUR PART TO HELP PAKISTAN RECOVER FROM THE MOST DAMAGING FLOODS IN ITS HISTORY, WE PROVIDED ASSORTED PL-480 ASSISTNACE, INCLUDING 40,000 TONS OF SORGHUM WORTH $4.6 MILLION THROUGH A TITLE I SALES AGREEMENT SIGNED
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CONFIDENTIAL

PAGE 02 ISLAMA 04474 110822Z

NOV. 2, 1973.

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

3. AT THE TIME OF THE SALES AGREEMENT, BARLEY WAS AN ITEM WHICH COULD BE FREELY EXPORTED BY PRIVATE TRADERS WITHOUT GOP LICENSE. BUT ONLY SMALL AMOUNTS OF THIS GRAIN BEEN EXPORTED. NOBODY IN THE GOP ANTICI-

PATED THAT SIZEABLE BARLEY EXPORTS MIGHT OCCUR AND THEREFORE THE GOP TOOK NO IMMEDIATE PRECAUTIONARY MEASURES TO MONITOR OR REQUIRE LICENSING OF THIS PRODUCT. THEY ANTICIPATED THAT SUCH EXPORTS AS WERE OCCURRING LAST FALL WOULD HAVE PETERED OUT BY NOV. 2. AS A SPECIAL DISPENSATION, WASHINGTON PERMITTED THE GOP BAN ON FEEDGRAIN EXPORTS TO BEGIN ON THE SIGNING DATE RATHER THAN AT BEGINNING OF FY-1974.

4. WHEN WE BROUGHT TO THE GOP'S ATTENTION THAT BARLEY EXPORTS SEEMED TO BE CONTINUING AFTER NOV. 2, THE GOP WAS SURPRISED, EMBARRASSED, AND TOOK STEPS TO STOP THE TRADE. BARLEY WAS MADE SUBJECT TO GOP EXPORT LICENSING AND BARLEY EXPORTS WERE BANNED (THE BAN STILL EXISTS) UNTIL FURTHER NOTICE. NEVERTHELESS BETWEEN NO. 2 AND THE TIME BARLEY EXPORTS WERE EFFECTIVELY HALTED WE ESTIMATE SOME 25,000 MT LEFT THE COUNTRY. ACCORDING TO RECENT DATA PROVIDED BY THE GOP THE AMOUNT OF EXPORTS WERE MUCH LOWER: 8,259 MT. GIVEN THE STATE OF GOP RECORD KEEPING, WE FEAR THAT ANY ATTEMPT BY US TO RECONCILE THESE TWO SETS OF FIGURES IS LIKELY TO BE FRUITLESS, TIME CONSUMING, AND IRRITATING TO BOTH SIDES. IT WOULD MAKE IT VERY DIFFICULT TO EXACT A PENALTY IN TERMS OF SETTING ANY FIGURE FOR OFFSET FEEDGRAIN PURCHASES BY THE GOP.

5. IN SUMMARY, WE BELIEVE THAT A NARROW CONSTRUCTION OF SECTION 103(C) OF PL-480 WOULD FIND THE GOP IN VIOLATION OF THE ACT. SOME BARLEY WAS EXPORTED AFTER NOV. 2. A BROADER, AND WE THINK MORE REASONABLE INTERPRETATION, WOULD BE THAT BARLEY EXPORTS WERE STOPPED AS SOON AS GOP'S ATTENTION WAS CALLED TO CONTINUING SHIPMENTS. THE GOP CAN BE FAULTED FOR NOT TAKING ADEQUATE PREVENTIVE MEASURES SOON ENOUGH BUT THE GOP DID TRY TO LIVE UP TO THE AGREEMENT WHEN CONFIDENTIAL

POST-NOV. 2 BARLEY EXPORTS WERE DISCOVERED. WE BELIEVE IT IS SIGNIFICANT THAT THIS REQUIRED EXTRA-LEGAL PROCEDURES, SINCE IRREVOCABLE LETTERS OF CREDIT HAD TO BE BLOCKED.

6. NOW WE CAN GO TO THE GOP AND DEMAND THE PENALTY FOR THEIR INEFFICIENCY. BUT WE NEED TO BE AWARE THAT IF WE ARE INSTRUCTED TO DO THIS, THERE IS INEVITABLY GOING

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

TO BE A COST TO US TOO. IF WE NOW INSIST ON THEIR PAYING
OUT UP TO $4.6 MILLION EITHER TO USG OR FOR BUYING IMMEDIATELY
US FEEDGRAINS (AT A TIME WHEN IN ANOTHER CONTEXT WE ARE
TRYING TO CONSERVE THEIR FOREIGN EXCHANGE VIA DEBT RE-
SCHEDULING), FOR AN ERROR THEY CONSIDER TO BE UNINTEN-
TIONAL, OUR RELATIONS WILL SUFFER.

7. WASHINGTON AGENCIES MAY HAVE HOPED THAT PROVIDING
GOP WITH PENALTY OPTION OF IMPORTING COMMERCIALLY UP TO
40,000 MT OF FEEDGRAINS WAS POSSIBLE WAY OUT OF PROBLEM.
WE DO NOT THINK IT REALLY IS. PAKISTAN DOES NOT NORMALLY
IMPORT FEEDGRAINS. WE DO NOT ANTICIPATE GOP DOING SO OVER
NEXT TWELVE MONTHS.

8. A LAST POINT. HAD WE GONE TO THE GOP IN JANUARY OR
EVEN FEBRUARY AND EXPLAINED WE HAD NO RECOURSE BUT PENALIZE
THEM THEY MIGHT HAVE SWALLOWED THEIR MEDICINE WITHOUT
MAKING IT AN ISSUE. GOING TO THEM NOW IN MAY, FOUR
MONTHS LATER, MAKES IT A DIFFERENT STORY. BECAUSE HAD THEY
BELIEVED WE WERE GOING TO MAKE THEM PAY CASH THEY MIGHT
HAVE PREFERRED TO STOP THE SHIPMENTS RATHER THAN ACCEPT
THEM ON NON-CONCESSIONARY TERMS.

9. ACTION REQUESTED. I STRONGLY URGE WE DROP THE
IDEA OF PENALIZING THE GOP. INSTEAD I PROPOSE WE SEND
THEM A LETTER ON FOLLOWING LINES: WE WOULD INFORM THEM
OF USG DEEP CONCERN OVER WHAT TRANSPIRED AND THAT UNDER
US LAW WE COULD HAVE APPLIED SEVERE PENALTIES, HOWEVER
IN VIEW OF PROMPT GOP ACTIONS TO BAR BARLEY EXPORTS WHEN
THE MATTER WAS CALLED TO ITS ATTENTION, AND PAKISTAN'S
TIGHT BALANCE OF PAYMENTS SITUATION THE USG HAS AGREED
NOT TO PURSUE THE MATTER FURTHER.
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PAGE 04 ISLAMA 04474 110822Z

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Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXPORTS, PL 480, LAW, BARLEY, FOREIGN POLICY POSITION
Control Number: n/a
Copy: SINGLE
Draft Date: 11 MAY 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GarlanWA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974ISLAMA04474
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740116-0163
From: ISLAMABAD
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740555/aaaabwus.tel
Line Count: 154
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: STATE 089446
Review Action: RELEASED, APPROVED
Review Authority: GarlanWA
Review Comment: n/a
Review Content Flags:
Review Date: 23 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 AUG 2002 by WorrelSW>; APPROVED <13 FEB 2003 by GarlanWA>
Review Markings:

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US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PL-480 AND BARLEY EXPORTS
TAGS: EAID, PFOR, PK, US
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

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